

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON TAXATION

Call to Order: By **CHAIRMAN GERRY DEVLIN**, on January 14, 1999 at 8:00 A.M., in Room 413/415 Capitol.

ROLL CALL

Members Present:

Sen. Gerry Devlin, Chairman (R)
Sen. Bob DePratu, Vice Chairman (R)
Sen. John C. Bohlinger (R)
Sen. Dorothy Eck (D)
Sen. E. P. "Pete" Ekegren (R)
Sen. Jon Ellingson (D)
Sen. Alvin Ellis Jr. (R)
Sen. Bill Glaser (R)
Sen. Barry "Spook" Stang (D)

Members Excused: None

Members Absent: None

Staff Present: Sandy Barnes, Committee Secretary
Lee Heiman, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 106, 1/8/1999; SB 109,
1/12/1999
Executive Action: SB 106; SB 109

HEARING ON SB 106

Sponsor: SENATOR PETE EKEGREN, SD 44, CHOTEAU

Proponents: Gene Walborn, Department of Revenue

Opponents: None

Opening Statement by Sponsor:

SEN. PETE EKEGREN, SD 44, Choteau, introduced **SB 106** as a bill that clarifies that the proceeds from a winning lottery ticket purchased in Montana are considered income earned in Montana and therefore subject to Montana individual income tax. Currently Montana law is not clear regarding the taxation of Montana lottery winnings in the cases where the winner has moved out of the state after winning the lottery. He said the advantage of this legislation is that it provides clarification of the statute at issue and should prevent further litigation. There is no fiscal impact associated with the proposed legislation, but may save in the costs of litigation.

Proponents' Testimony:

Gene Walborn, Department of Revenue, reiterated what **SEN. EKEGREN** said about the bill simply being a clarification of the current law and current practice of taxing lottery winnings. He said that in 1993 the Legislature passed a policy and intent in 15-32-46 to clarify that lottery winnings proceeds would be taxed as a Montana source of income. Just recently the Montana Supreme Court found that these proceeds should be taxed as income for residents and nonresidents. The issue was that the winner bought the ticket and was awarded the winnings here in Montana and then moved out of state. They were contending that their annual payment was not Montana income. The Montana Supreme Court agreed with the Department of Revenue that it is Montana income. This bill in Section 1 clarifies Montana lottery winnings and defines how that applies to residents and nonresidents, and then Section 2 actually spells out for a nonresident that income derived from Montana lottery winnings is considered income earned in Montana.

Opponents' Testimony: None

Questions from the Committee and Responses:

SEN. GLASER asked whether, when a person is driving through the state and buys a lottery ticket and wins, no matter what the amount, that is considered taxable income from Montana, and **Mr. Walborn** responded that it is.

CHAIRMAN DEVLIN then asked if a person wins in Montana but lives in Oregon, what keeps that person from getting taxed twice, from each state, on those earnings. **Mr. Walborn** stated that that person would receive credit for paying taxes in another state. He also said that 10% of it is withheld by the Montana Lottery who manages those payments. **CHAIRMAN DEVLIN** then asked how it is handled if a person living in Montana has won in another state.

Brian Smith, Department of Revenue, responded that if a person wins in another state and that state is withholding, the person will receive credit for taxes paid in another state when he files in Montana.

SEN. ELLIS then asked **Mr. Smith** whether the multi-state lottos allows the various states to withhold from winnings also. **Mr. Smith** said that they do. In those cases, it works like a franchise and Montana actually handles the paperwork. **SEN. ELLIS** asked if it was a multi-state lottery winner that was involved in the Montana Supreme Court case, and **Mr. Smith** responded that that was correct.

SEN. GLASER asked at what amount Montana starts collecting on winnings and how it is policed. **Mr. Smith** said that Montana has a voluntary compliance tax system, and expects that taxpayers will report their income. He said the major purpose of this bill is, when dealing with large lottery proceeds, anything that may be paid in annuity or a large lump sum payment, the Montana Lottery does withhold tax on that payment. **SEN. GLASER** asked if a person is able to write off gambling losses, and **Mr. Smith** replied that you can deduct those losses but only to the amount of your winnings.

Closing by Sponsor:

SEN. EKEGREN had no closing statement.

HEARING ON SB 109

Sponsor: SENATOR ALVIN ELLIS JR., SD 12, RED LODGE

Proponents: Gene Walborn, Department of Revenue
Mike Strand, Montana Independent Telecommunication
Systems
Geoff Feiss, Montana Telecommunication Association

Opponents: None

Opening Statement by Sponsor:

SEN. ALVIN ELLIS JR., SD 12, Red Lodge, introduced **SB 109** as an act changing the due date for the report and payment of telephone company license tax. He said the purpose of this proposal is to enhance customer service by simplifying tax forms and payments and to facilitate the administration of several taxes by providing for a consolidated tax reporting and remittance form for several closely related taxes. **SEN. ELLIS** said that the

advantage of this proposal is to provide for enhanced customer service through the concept of one-stop filing and payment of a variety of taxes common to specific types of companies. This proposal will allow companies to file one form and issue one check for the related taxes.

Proponents' Testimony:

Gene Walborn, Department of Revenue, appeared in support of **SB 109**. He said that it is the Department's goal to move timing of filing deadlines to provide customer service by getting like taxes or like collections on fees and taxes at the same time, and in this case it is the telephone company license tax. This would change the date when it is due from 60 days to 30 days after the end of each quarter. Some of the other taxes that are paid by telephone companies are due 30 days after the end of the quarter, and this legislation would allow the Department to develop one form for the collection of all these types of fees since most of them are paid by the same companies. Again, it's a move to provide a one-stop type of reporting for the Department.

Mike Strand, Executive Vice President and General Counsel, Montana Telecommunication Systems, which represents rural telephone cooperatives and independent rural telephone companies, said that several of their members already pay the telephone license tax, and some of them already pay the tax within the 30 days for the very reasons that the Department has stated. The rest of the members are not necessarily ecstatic over the idea of accelerating payment of the tax, but they understand the Department's rationale in doing so and therefore have no objection to paying the tax within the shorter time frame.

Geoff Feiss, Montana Telecommunications Association, said that he had surveyed the members of his organization, which represents both large and small commercial and cooperative telecommunication service providers throughout the state. He said one of his constituents already files within the 30-day period. Some of the others were not extremely excited about the change, but there were no objections.

Opponents' Testimony: None

Questions from the Committee and Responses:

SEN. GLASER asked **SEN. ELLIS** if this is an acceleration of a payment, and **SEN. ELLIS** said that it is an acceleration of payment and is being handled through a companion bill. **SEN. GLASER** asked if that's the **CI-75** bill, and **SEN. ELLIS** said that it was.

SEN. DEPRATU asked **Mr. Walborn** how much the cash flow impact of this bill would be. He said he understood that it's going to improve the cash flow for the state, but wondered how it is going to affect the cash flow of the telephone companies. **Mr. Walborn** agreed that there will be a one-time acceleration, and for that, there will be an interest impact involved.

SEN. BOHLINGER asked **Mr. Strand** whether some of the smaller telephone coops will have cash flow problems created because of this, and **Mr. Strand** answered that telephone cooperatives, first of all, are not paying telephone license tax, that only regulated companies pay that. On balance, the simplification and ease of paying all of these taxes all at once overshadowed the cash flow concerns.

SEN. ECK asked **Mr. Smith** if there would be a fiscal impact on that first \$1 million. **Mr. Smith** said that the fiscal note currently reflects that \$1 million impact in FY2000. The telephone license tax currently meets the criteria for revenue accrual in that it's received 60 days after the close of the fiscal year. **SEN. ECK** said that this will have to go on the ballot, which costs \$28,000, and wondered where that amount would come from. **Mr. Smith** said that should be reflected by the Secretary of State on the fiscal note which would accompany the companion bill, **SB 110**. **Mr. Smith** went on to say that under **CI-75**, any bill which essentially proposes a tax increase, and **CI-75** considers any acceleration as a tax increase, must go to a vote of the people, and the companion bill merely authorizes that referendum.

SEN. GLASER then said that there is a bill being circulated that specifies that anyone who makes it necessary to put an item on the ballot would share their cost of that piece of legislation. He asked whether the Department of Revenue should absorb that cost or should the General Fund absorb it, and **Mr. Smith** suggested that he cannot speak for the Department, but he said that coordination instructions would have to be with every referendum bill. He agreed that there would have to be funding somehow to pay for that election.

CHAIRMAN DEVLIN asked, if the Department had known that it was going to cost them \$28,000 to pay for the election for this acceleration, whether they would have proposed this legislation. **Mr. Smith** said that the purpose of the bill was not to get an additional \$1 million, but to provide synchronized filing deadlines for companies for similar taxes.

Closing by Sponsor:

SEN. ELLIS said he would reiterate what the Department just said, that the purpose of this bill is not to get additional revenue, but to simplify filing and make less paperwork. He urged do pass.

EXECUTIVE ACTION ON SB 106

Motion/Vote: **SEN. EKEGREN** moved SB 106 DO PASS. Motion carried 8-1 with Glaser voting no.

EXECUTIVE ACTION ON SB 109**Discussion:**

CHAIRMAN DEVLIN reminded the committee that these situations of accelerated payments put an additional \$1 million into the first year, but then that does not appear in the second year and causes problems. **Terry Johnson, Legislative Fiscal Division**, interjected that the telephone license tax is one of the taxes that goes through an accrual process. He said he believes the fiscal note is inaccurate in that the \$1 million would not be there because under current processes, those revenues are accrued, even though the cash hasn't physically been received by the state. He said that in his opinion the only impact that you might have would be a small amount of additional interest earnings that would be collected from the acceleration of the taxes for a one-month time period. He further explained that the telephone license tax that is due June 30 actually doesn't show up until 60 days later under current law, but under current accounting practices, the revenues are accrued. In other words, they are booked as if they have been received.

CHAIRMAN DEVLIN asked that the sponsor of the bill be provided the information on that situation and what that interest amount might be, and **Mr. Johnson** said he would be glad to provide that.

SEN. ELLIS said he had asked **Mr. Smith** whether this tax was paid quarterly, and since it is, it was his opinion that therefore the interest impact affected the industry four times a year. The actual effect to both the industry and the state, especially inasmuch as this is accrual, is the interest on the money. The companies don't have it for 30 days and the state does. **Mr. Smith** explained that this tax is paid every calendar quarter. Currently it must be paid 60 days after the close of the calendar quarter. The proposed legislation says that it would be paid 30 days after the close of the calendar quarter, so there is an interest impact there. But also, it is essentially only the

first time they make the payment. After that they are still paying 90 days later the same payment again. He said he would also do some checking on the accrual of these funds.

SEN. ECK said that in the past the companies almost always supported legislation of this type because they benefitted from having their like taxes all due at the same. She said she feels that the focus of the bill is to improve bookkeeping procedures.

SEN. GLASER said he will not support this or the companion bill because he feels that a consideration of whether this type of legislation needs to be done now in light of **CI-75** which requires a vote. He said that the telephone companies can pay ahead of time if they want without requiring a vote of the general populace. **SEN. STANG** reiterated that this would not accelerate it into the current fiscal year and so there is no fiscal impact other than the interest lost by the companies the first 30 days and the interest gained by the state is the only fiscal impact of this bill, and so does not come under **CI-75** and is a nice housekeeping bill.

Motion: **SEN. ELLIS** moved SB 109 DO PASS.

Further Discussion:

SEN. ELLIS said that he disagreed with **Mr. Smith** in that he feels that the impact to the companies is the interest on that \$1 million for 30 days four times a year, not just the first payment. **SEN. EKEGREN** said that he believes that the impact is really only on the first payment, and that this is merely a bill that cuts some of the red tape.

SEN. GLASER reiterated his concern about the impact that all these types of bills could have on the **CI-75** issue, and **SEN. ELLIS** said that if **CI-75** is ratified by the court, these types of bills should be killed in the House. It is his belief that **CI-75** will not be ratified by the Court.

Vote: Motion carried 7-2 with Devlin and Glaser voting no.

ADJOURNMENT

Adjournment: 9:05 A.M.

SEN. GERRY DEVLIN, Chairman

SANDY BARNES, Secretary

GD/SB

EXHIBIT (tas10aad)